

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

JERMAINE TURNER,

Petitioner,

v.

**MIKE DEWINE, OHIO ATTORNEY
GENERAL¹,**

Respondent.

Case No.: 5:13cv1089

**JUDGE BENITA Y. PEARSON
Magistrate Judge George J. Limbert**

**Interim Report and Recommendation
of Magistrate Judge**

The above-captioned case is before the undersigned on Ohio Attorney General Mike DeWine's motion to dismiss Petitioner Jermaine Turner's federal habeas corpus petition ("Petitioner"). ECF Dkt. #7. For the following reasons, the undersigned recommends that the Court GRANT the motion and dismiss Ohio Attorney General Mike DeWine from the instant case, but substitute Alan Lazaroff, Warden of Mansfield Correctional Institution, as Respondent.

I. RELEVANT PROCEDURAL HISTORY

On May 7, 2013, Petitioner executed a federal habeas corpus petition pursuant to 28 U.S.C. § 2254. ECF Dkt. #1. The petition form requires the petitioner to fill out certain information, including his name, his place of confinement, his prisoner number, and the district in which he is confined. *Id.* Across from the space requiring the petitioner's name and on the same line, the form requests that the petitioner name the Respondent and it indicates in parentheses next to Respondent "(authorized person having custody of petitioner)." *Id.* Below the section requesting the names of the petitioner and the respondent is a request for the petitioner to identify the Attorney General of the State. *Id.*

¹ The undersigned notes that the docket in this case identifies Ohio Attorney General DeWine as Respondent. However, Petitioner did not name Attorney DeWine as a respondent in this case. ECF Dkt. #1. He did identify Mr. DeWine as the Attorney General for the State of Ohio on the federal habeas corpus petition form which asked for the name of the Attorney General of the State in which Petitioner was in custody. *Id.* Thus, the undersigned has captioned the case as it appears on the docket for purposes of the instant Report and Recommendation.

In this case, Petitioner completed all of the required information except the Respondent's name. ECF Dkt. #1. It is left blank. On the Civil Cover Sheet filed in conjunction with his federal habeas corpus petition, Petitioner named Ohio Attorney General DeWine as the Defendant. ECF Dkt. #1-1. On the affidavit that Petitioner filed requesting that he be able to proceed with his federal habeas corpus petition in forma pauperis, Petitioner named "Terry Tibias" as Respondent in this case. ECF Dkt. #2. In 2013, Terry Tibbals was the Warden of Mansfield Correctional Institution, the correctional facility where Petitioner was housed. *See* Ohio Department of Rehabilitation and Correction, 2013 Annual Report at page 37 (listing Terry Tibbals as Warden of Mansfield Correctional Institution). Currently, Alan J. Lazaroff is the Warden of Mansfield Correctional Institution. *See* <http://www.drc.ohio.gov/public.manci.htm>.

II. OHIO ATTORNEY GENERAL'S MOTION TO DISMISS - ECF DKT. #7

On September 20, 2013, Ohio Attorney General Mike DeWine filed the instant motion to dismiss, asserting that he is not the proper Respondent in this case because he is not the immediate custodian of Petitioner and lacks day-to-day control over him. ECF Dkt. #7 at 1.

The Ohio Attorney General is correct. The proper respondent in a federal habeas corpus petition challenging a state court judgment is the state officer who has custody of the petitioner. Rule 2(a) of Rules Governing Section 2254 Cases. Accordingly, the undersigned recommends that the Court GRANT Ohio Attorney General Mike DeWine's motion to dismiss and dismiss him from Petitioner's instant federal habeas corpus case. ECF Dkt. #7.

However, the undersigned further recommends that the Court add Warden Alan Lazaroff of Mansfield Correctional Institution as Respondent to Petitioner's federal habeas corpus petition. *See McMaster v. City of Troy*, 911 F.2d 733, No. 88-1715, 1990 WL 116540, at *3 (6th Cir. Aug. 13, 1990), unpublished (although petitioner failed to name proper respondent in federal habeas corpus petition, he satisfied federal habeas corpus statute since he identified his custodian and place of incarceration in body of petition). While Petitioner did not identify the Warden of Mansfield Correctional Institution in his federal habeas corpus petition form, he did identify the Warden as Respondent in his prisoner affidavit. ECF Dkt. #2. He also identified his place of incarceration. ECF Dkt. #1.

For the foregoing reasons, the undersigned recommends that the Court GRANT Ohio Attorney General Mike DeWine's motion to dismiss and dismiss him from the instant case. ECF Dkt. #7. However, the undersigned further recommends that the Court substitute Alan Lazaroff, Warden of Mansfield Correctional Institution, as Respondent in the instant case and allow Petitioner's federal habeas corpus petition to proceed.

Date: May 12, 2014

/s/George J. Limbert

George J. Limbert
United States Magistrate Judge

ANY OBJECTIONS to this Report and Recommendation must be filed with the Clerk of Court within fourteen (14) days of service of this notice. Fed. R. Crim. P. 59. Failure to file objections within the specified time constitutes a WAIVER of the right to appeal the Magistrate Judge's recommendation. *Id.*